

EXHIBIT 41

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1 THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF OREGON
3 MEDFORD DIVISION
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5 ARNAUD PARIS,)
6 Petitioner,) Case No. 1:22-cv-01593-MC
7 v.)
8 HEIDI MARIE BROWN,) December 5, 2022
9 Respondent.)
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13 COURT TRIAL
14 EXCERPT OF TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE MICHAEL J. MCSHANE
16 UNITED STATES DISTRICT COURT JUDGE
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1 APPEARANCES

2 FOR THE PETITIONER:

3 DAVID B. STARKS
4 McKinley Irvin PLLC
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6 Suite 1750
7 Seattle, WA 98101

8 FOR THE RESPONDENT:

9 KATELYN D. SKINNER
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14
15 COURT REPORTER: Kendra A. Steppler, RPR, CRR
16 United States District Courthouse
17 District of Oregon
18 405 E. 8th Avenue, Room 2100
19 Eugene, OR 97401

20 * * *

1 (Excerpt of proceedings began at 9:35 AM.)

2

3 THE COURT: All right. Let's hear from Petitioner.

4 MR. STARKS: Certainly, Your Honor. As you're
5 looking through the exhibit, I would first say that this
6 isn't -- I mean, this isn't a decision tree email. I mean, the
7 second page -- this is, I think, page 163, as we've designated
8 Petitioner's exhibits. You'll see at the top, on the third
9 line down -- or fourth line down -- indeed, Heidi's plan is to
10 remain in Oregon at the end of the upcoming school year, and to
11 tell Arnaud, once Oregon courts have acquired jurisdiction
12 within six months -- by January 2023 -- that she does not plan
13 to move back to France with the girls. If he is unhappy with
14 that change, he'll have to file with Oregon courts.

15 So, I mean, this isn't a decision tree email. This is an
16 email saying here's what the plan is now that we've secured the
17 July agreement.

18 As for the overall admissibility of the document, Your
19 Honor, you know, we spent the time, so I provided the briefing,
20 on the legal issues and on the attorney-client privilege issue.
21 I think I could wrap the attorney-client privilege issue and
22 the fraud exception into the overall view of the Hague
23 Convention. Because this Court has sort of a unique place in
24 the world when it hears these sorts of cases.

25 And Hague Convention Article 30 makes it very clear that

1 you sit in many ways in equity and not just in law. You're
2 here to do fairness. You're here to figure out what's right
3 and to do what's right as well as you can.

4 And so when you look at Article 30, any application
5 submitted to the Central Authorities or directly to the
6 Judicial or Administrative Authorities of the contracting
7 state, in accordance with the terms of the Convention, together
8 with documents and any other information appended thereto or
9 provided by Central Authority, shall be admissible in the
10 courts or Administrative Authorities of the contracting state.

11 This is designed so that the Petitioner can bring forward
12 the evidence necessary for the Court to make some fundamental
13 decisions. What is the habitual residence of the child? Are
14 there any defenses to the return? And so I think we get --
15 it's easy, because we're lawyers, and we're used to the Kabuki
16 dance of what we usually do in these cases. Right? But this
17 isn't those usual cases. This is those cases where you're
18 vested with a lot of authority to just do what's right.

19 And we have the information. We've seen the email. In
20 many ways, it's the kabuki dance of pretending we haven't seen
21 it anymore. If we pretend we haven't seen it anymore -- the
22 facts are the facts -- right -- however they've developed.
23 Article 30 certainly says that this admissible because it was
24 appended to my petition. And my petition was filed in complete
25 conformity with the Convention, and, therefore, it is

1 admissible. Thank you, Your Honor.

2 THE COURT: Okay. I'm going to allow it in. I don't
 3 think I need to hear evidence of forensic investigators. I
 4 don't think there's -- I don't have any huge doubt that, in
 5 fact, Ms. Brown did not consent to Mr. Paris going through her
 6 belongings.

7 But it does appear to be more than just a general option
 8 kind of counseled by an attorney. This appears to be a
 9 strategy showing that Ms. Brown intended to deceive when she
 10 executed an agreement that she never intended on following,
 11 which does appear to be then fraudulent, and it would come
 12 under -- we call it the "crime fraud exception," but it --
 13 "fraud exception" -- and I do think it falls under that.)

14 If this Court actually does have broad equity, as
 15 Petitioner suggests, under the Hague Act, I do think under that
 16 kind of broad equity, in terms of what was the intent of the
 17 parties, and in a matter which intent is so hard to get at,
 18 this is a relevant document that does assist the Court.

19 Again, if the Petitioner -- or, excuse me -- the
 20 Respondent -- I'll just probably say "mother" and "father."
 21 It's easier. If the mother in this case testifies consistently
 22 that this was her thought, there's no reason to enter it. If
 23 she testifies inconsistently, I think it would come in under
 24 the crime fraud exception. So that's where we are with that.

25 Okay. Anything else as a preliminary matter?

1 MS. SKINNER: Your Honor, if I may be heard just on
2 the topic so that I have the record clear. I would like to
3 offer, for the Court to consider and for evidence, our
4 Exhibit 242, which is the counter surveillance report from our
5 computer expert.

6 THE COURT: That's fine. I just don't think it has
7 any bearing on my decision about whether this is protected by
8 the attorney-client privilege. I don't know of any case that
9 would say suppression is required under this set of
10 circumstances. It's not a criminal case.

11 MS. SKINNER: Thank you, Your Honor. And I would
12 also like to state that the crime fraud exception would be
13 applicable to -- if a crime had been committed or if fraud, as
14 defined under the criminal statute, had been perpetrated. And
15 here -- which has to do for pecuniary reasons, not just to --
16 to -- to make it so that the individual is deceived. Fraud,
17 under the criminal definition, has to do, again, with deceit
18 for pecuniary gain.

19 This is a matter of contract, not a matter of whether a
20 crime or a fraud -- criminal fraud -- had been committed to
21 enter into the contract. I would also object on the basis that
22 the email is hearsay. There's no witness authenticating the
23 email, and, again, would object under attorney --

24 THE COURT: Well, your client could authenticate the
25 email. I mean, I haven't admitted it yet. But they are going

1 to move to admit it. I mean, if you're telling me your
2 client's going to say, "I have no idea what this is, I'm
3 completely shocked," we probably need to have that discussion.

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5 (Excerpt of proceedings ended at 9:43 AM.)

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1 C E R T I F I C A T E
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3 Arnaud Paris v. Heidi Marie Brown
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5 1:22-cv-01593-MC
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7 Court Trial Excerpt
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9 December 5, 2022
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11 I certify, by signing below, that the foregoing is a true
12 and correct transcript of the record, taken by stenographic
13 means, of the proceedings in the above-entitled cause. A
14 transcript without an original signature, conformed signature,
15 or digitally signed signature is not certified.
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/s/Kendra A. Steppeler, RPR, CRR
Official Court Reporter

Signature Date: 1/10/2023